



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Order 96-9-15

Served: September 13, 1996

Issued by the Department of Transportation
on the 13th day of September, 1996

**AMERICAN AIRLINES, INC. et al.,
and THE TACA GROUP RECIPROCAL CODE-
SHARE SERVICES PROCEEDING**

Docket OST 96-1700

Applications of

**AMERICAN AIRLINES, INC.
AVIATECA S.A.
COMPANIA PANAMENA DE AVIACION S.A.
LINEAS AEREAS COSTARRICENSES S.A.
NICARAGUENSE DE AVIACION S.A.
TACA INTERNATIONAL AIRLINES S.A.
TACA DE HONDURAS S.A. DE C.V.**

**Docket OST 96-1518
Docket OST 96-1511
Docket OST 96-1515
Docket OST 96-1520
Docket OST 96-1513
Docket OST 96-1512
Docket OST 96-1514**

for exemptions under 49 U.S.C. section 40109

Joint Application of

**AMERICAN AIRLINES, INC. et al.
and THE TACA GROUP**

Undocketed

for statements of authorization under 14 CFR Parts 207
and 212 (reciprocal code-sharing services)

ORDER INSTITUTING PROCEEDING

Summary

American Airlines, Inc. ("American"), and its regional affiliates¹, on the one hand, and Aviateca S.A., Compania Panamena de Aviacion S.A., Lineas Aereas Costarricenses S.A., Nicaraguense de Aviacion S.A., TACA de Honduras S.A., and TACA International Airlines S.A. (collectively referred to as "the TACA Group"), on the other hand, filed (1) separate applications for exemption, and (2) a joint application for statements of authorization to engage in certain reciprocal code-sharing services. In the interest of administrative efficiency,

¹ Executive Airlines, Inc., Flagship Airlines, Inc., Simmons Airlines, Inc., and Wings West Airlines, Inc.

we have decided to institute the *American Airlines, Inc., et al., and the TACA Group Reciprocal Code-Share Services Proceeding*. We therefore consolidate into this proceeding the captioned applications of American Airlines, Aviateca, Compania Panamena de Aviacion, Lineas Aereas Costarricenses, Nicaraguense de Aviacion, TACA International Airlines, and TACA de Honduras for certain exemption authorities; and the American Airlines *et al.*, and the TACA Group statements of authorization for reciprocal code-sharing services. We are also requiring additional information to facilitate our review of the applications and are deferring consideration of these applications pending further notice. Finally, when we have determined that the record of this case is complete, we will announce an appropriate procedural schedule for reaching a decision expeditiously.

Applications

On July 8, 1996, American Airlines applied for an exemption to allow it to integrate its certificate authority to serve points in Central America and the Caribbean (Route 137), South America (Route 389), and Mexico (Route 560). Additionally, the TACA Group (composed of six Central American airlines) filed separate applications for exemptions authorizing the carriers to serve additional points in the United States, Canada, Europe, and Tokyo². Concurrently, American and the TACA Group filed a joint application for statements of authorization to engage in certain reciprocal code-sharing services. These applications were filed under 49 U.S.C. section 40109 and 14 C.F.R. Parts 207 and 212, respectively. The applicants urge the Department to grant the various exemption requests and statements of authorization promptly.

Responsive Pleadings

On July 17, 23, and 25, 1996, Continental Airlines, Inc. (“Continental”), United Air Lines, Inc. (“United”), and Delta Air Lines, Inc. (“Delta”)³ respectively, filed responses opposing the various applications. The opposing parties generally argue that the statements of authorization and the various extra-bilateral exemption authorities sought here are anticompetitive and are inconsistent with the public interest and the Department’s international aviation policy objectives.

² The TACA Group airlines would use this additional authority to implement the proposed code-sharing arrangement with American Airlines.

³ Additionally, Delta filed a motion for leave to file an otherwise unauthorized document. We will grant the motion.

On August 1, 1996, American and the TACA Group airlines filed replies. They argue that contrary to the opposing parties characterizations, the proposed code-sharing arrangement is consistent with the Department's International Air Transportation Policy Statement and that there exists "ample" and "potential" competition in the U.S.-Central America market⁴.

On August 13, 1996, United filed a consolidated response and motion for leave to file. We will grant the motion.

Additional Information Requirements

Based on our preliminary review of the applications and comments, we have determined that in light of the issues that have been raised, certain additional information is essential for a thorough assessment of the proposed arrangements. We therefore require the joint applicants to provide the Department with the additional data and evidentiary information set forth in the attachment.

ACCORDINGLY:

1. We institute the *American Airlines, Inc. et al., and the TACA Group Reciprocal Code-Share Services Proceeding*, which will be decided by non-oral hearing procedures;
2. We direct American Airlines, Inc., Aviateca S.A., Compañia Panamena de Aviacion S.A., Lineas Aereas Costarricenses S.A., Nicaraguense de Aviacion S.A., TACA de Honduras S.A., and TACA International Airlines S.A. to submit the additional data and evidentiary information set forth in the attachment to this order into Docket OST 96-1700;
3. The joint applicants shall submit an original and five copies of all additional data and evidentiary information requested in ordering paragraph 2. The joint applicants shall also accompany all foreign language documents with English translations;
4. We consolidate (1) the applications for exemption of American Airlines, Inc., in Docket OST-96-1518; Aviateca S.A., in Docket OST-96-1511; Compañia Panamena de Aviacion S.A., in Docket OST-96-1515; Lineas Aereas Costarricenses S.A., in Docket OST-96-1520; Nicaraguense de Aviacion S.A., in Docket OST-96-1513; TACA de Honduras S.A., in Docket OST-96-1514; and TACA International Airlines S.A., in Docket OST-96-1512; and

⁴ The applicants maintain that the proposed arrangement would provide new and expanded entry in international markets, stimulate traffic between the U.S. and points in Central America and elsewhere, and that consumers and shippers would benefit from having a choice of carriers marketing services on flights operated by American and the TACA Group, thereby increasing service and price options. They also argue that consumers would be provided improved connections and other service enhancements, and that communities would benefit from the new or enhanced competitive presence of American and the TACA Group.

(2) the undocketed joint application for statements of authorization of American Airlines, Inc. *et al.* and the TACA Group into the *American Airlines, Inc. et al., and the TACA Group Reciprocal Code-Share Services Proceeding*;

5. We defer consideration of this matter pending further notice;

6. We grant all motions for leave to file otherwise unauthorized documents;

7. Upon our determination that the application(s) are complete, we will establish a procedural schedule for comments and such other responsive pleadings as may be determined necessary to decide this matter fairly and expeditiously; and

8. We shall serve this order on American Airlines, Inc.; Aviateca S.A.; Compania Panamena de Aviacion S.A.; Lineas Aereas Costarricenses S.A.; Nicaraguense de Aviacion S.A.; TACA de Honduras S.A.; and TACA International Airlines S.A.; the Ambassadors of El Salvador, Costa Rica, Guatemala, Nicaragua, Honduras, and Panama in Washington, D.C.; the Department of Justice (Antitrust Division); the Department of State (Office of Aviation Negotiations); and all other parties served with the applications.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
<http://www.dot.gov/dotinfo/general/orders/aviation.html>*

**EVIDENTIARY REQUEST FOR THE AMERICAN AIRLINES AND
TACA GROUP RECIPROCAL CODE-SHARE SERVICES PROCEEDING**

I. Plans and Agreements

(Note: unless otherwise indicated, include the following for each carrier party separately and any joint products, where applicable.)

1. Complete copies of all “agreements/arrangements,” including marketing and any other cooperative agreements/arrangements, that involve the creation or implementation of the proposed code-sharing relationship and related relationships between American and each of the airlines of the TACA Group.
2. Separate description of each party’s strategic objectives in forming the code-share agreements/arrangements.
3. All studies, reports, and analyses, dated or produced within the last two years, that discuss route development, internal expansion, service expansion, or marketing plans or strategies, concerning air services between the U.S. and Central America and air services behind and beyond the U.S. and Central America.
4. All studies, surveys, analyses and reports, dated or produced within the past three years, that were prepared by or for any officer, director, or individual exercising similar functions that evaluate or analyze the subject of potential code sharing or other cooperative agreements/arrangements between the TACA Group (as individual airlines or as a group) and any U.S. carrier. (If not contained in the document itself, the date of preparation and the name and title of each individual who prepared each such document should be included.)
5. All studies, surveys, analyses and reports, dated or produced within the last two years, that were prepared by or for any officer, director, or individual exercising similar functions for the purpose of evaluating or analyzing the proposed agreements/arrangements with respect to market shares, competition, competitors, fares, markets, potential for traffic growth or expansion into geographic markets. (If not contained in the document itself, the date of preparation and the name and title of each individual who prepared each such document should be included.)
6. All documents that discuss any service or operational changes planned or anticipated as a result of the proposed agreements/arrangements.

II. Routes

7. A list of all routes that each of the parties is currently serving, and of routes each would serve if the “definitive agreements/arrangements” are approved. Additionally, fully identify all of the parties’ current code-share/alliance arrangements and their route systems and any plans to alter such arrangements or alliances if the American/TACA Group alliance is approved.

8. List all “overlap” markets now existing between American and the TACA Group, including markets served in combination with other code-share or marketing partners (specifically, include all gateway-to-gateway, all nonstop, and all connecting markets.

9. List all of the new markets that would receive “first on-line service” as a result of the alliance and provide estimates of the number of passengers that would benefit from this new “on-line service” and how many of these passengers would be U.S.-originating travelers.

III. Services

10. Provide a discussion of the level of service that each carrier party intends to provide in the U.S.-Central American market including behind- and beyond-gateway markets.

11. Provide a discussion of significant service and equipment changes that the parties would expect to make within two years of DOT approval of the proposed alliance.

IV. Traffic

12. Provide an analysis of how much traffic each code-share partner carries in each “overlap” market and differentiate between local gateway-to-gateway traffic, behind traffic, and beyond traffic.

V. Public Interest and Competition

13. Provide a discussion of whether and how the alliance is consistent with the public interest, and what public benefits are expected to result from the agreements/arrangements.

14. Provide a discussion of how the agreements/arrangements would affect important international aviation policy objectives of the United States.

15. Provide a discussion of the agreements’/arrangements’ impact on both U.S. domestic and international airline competition.

16. Provide forecast information and data concerning any traffic diversion anticipated from other U.S. flag carriers should the agreements/arrangements be approved.

17. Provide complete information describing the extent to which airport facilities, including, but not limited to, gates, counter space, and ground-handling, are or will be made available to any U.S. airline desiring to begin or increase service at Central American airports.
18. Provide all studies, surveys, analyses, and reports, dated or produced within the last two years, that discuss airline competition in any U.S.-Central American market.
19. All studies, surveys, analyses, and reports, dated or produced within the last two years, that discuss the impact on American Airlines of any of the code-sharing relationships between Continental Air Lines and any of the airlines in the TACA Group, including the impact of any such relationship on American Airlines' ability to compete for traffic in any U.S.-Central American market.
20. All studies, surveys, analyses, and reports that discuss the impact on Continental Air Lines of the proposed code-sharing relationships between American Airlines and any of the airlines within the TACA Group.
21. An assessment of availability of commercially usable slots at the foreign applicants' homeland international gateway airports for U.S. airlines, particularly new entrants.
 - a. Detailed analysis of slot and gate allocations by each airline serving the foreign applicants' homeland gateway international airports.
 - b. Description of the slot allocation procedures for the foreign applicants' homeland gateway international airports.
 - c. Any other evidence of meaningful access to the foreign applicants' homeland gateway international airports for U.S. airlines.